

UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of)
)
Jamie Bashtanyk,)
)
Respondent)
_____)

Proceeding No. D2020-09

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Jamie Bashtanyk (“Respondent”) on April 10, 2020. Respondent submitted the ten-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Saint-Lazare, Québec, Canada is a Canadian trademark agent who has been granted reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. Respondent has practiced before the Office in trademark matters. Respondent is a “practitioner” pursuant to 37 C.F.R. § 11.1. Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent matters before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in her April 10, 2020 Affidavit of Resignation that:

A. Her consent is freely and voluntarily rendered, and she is not being subjected to coercion or duress.

B. She is aware that, pursuant to 37 C.F.R. § 11.34, the OED Director has filed a Disciplinary Complaint alleging that she violated the USPTO Rules of Professional Conduct, namely: *In re Bashtanyk*, Proceeding No. D2020-09. The Complaint alleges, *inter alia*, the following:

Background

1. On May 12, 2009, the Canadian Intellectual Property Office ("CIPO") admitted Respondent as a registered trademark agent who was authorized to represent persons in trademark matters filed with CIPO.
2. On November 20, 2015, the USPTO received from Respondent a signed application for Reciprocal Recognition pursuant to 37 C.F.R. § 11.14(c).
3. On February 3, 2016, the USPTO granted Respondent, via a letter signed on behalf of the OED Director, reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. The February 3, 2016 letter expressly stated, "In view of the recognition granted to you under 37 [C.F.R.] § 11.14(c), you are required to conduct yourself in compliance with the USPTO Rules of Professional Conduct. *See* 37 [C.F.R.] §§ 11.101 through 11.901."
4. Respondent's acts and omissions leading to the alleged violations of the USPTO Rules of Professional Conduct set forth below were willful.

Count I
Impermissible Signing of Trademark Filings

5. Respondent is the the chief executive officer of Trademark Depot, a company based in Saint-Lazare, Québec, Canada.
6. Trademark Depot advertises on its website that it offers trademark filing services in Canada, the United States, and the European Union.
7. From about January 2017, through about September 23, 2019, Respondent was associated, as an independent consultant, with Trademark Factory International Inc. (“Trademark Factory”), a company headquartered in Vancouver, British Columbia, Canada.
8. Trademark Factory assists individuals with registering trademarks in the United States, Canada and other countries.
9. As part of Respondent’s association with Trademark Factory, Respondent, *inter alia*, prepared and filed USPTO trademark applications, Office action responses, and statements of use with the USPTO

TEAS, Application Signature Methods, TICRS and IP Addresses

10. The Trademark Electronic Application System (“TEAS”) is the USPTO’s electronic trademark filing and prosecution system. Via TEAS, trademark applicants electronically prepare, sign and file documents with the USPTO.
11. 37 C.F.R. § 2.193(a) states, in pertinent part, that “[e]ach piece of correspondence that requires a signature” filed with the USPTO in trademark matters must bear:
 - (1) A handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof; or
 - (2) An electronic signature that meets the requirements of paragraph (c) of this section, personally entered by the person named as the signatory. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper, by facsimile transmission (§ 2.195(c)), or through TEAS or [the Electronic System for Trademark Trials and Appeals “ESTTA”].

(emphasis added).

12. The “DIRECT” sign method, where the applicant personally enters the characters that she or he has adopted as their signature, is the default signature method for filing trademark documents with the USPTO.

13. The other methods for electronic signatures on trademark documents are: (a) "E SIGN-ON" where a link is sent to a third party who opens the link, electronically signs her or his name, and submits the signature directly to the USPTO, and (b) "H SIGN-ON" where an electronic version of an original handwritten pen-and-ink signature is uploaded via TEAS.
14. 37 C.F.R. § 2.193(c) elaborates on the requirements for electronic signatures submitted to the USPTO and reiterates that a "person signing a document electronically must . . . [p]ersonally enter" the characters that he or she has adopted as their signature, placed between two forward slash symbols.
15. The USPTO's Trademark Manual of Examining Procedure ("TMEP"), which is electronically published and updated by the USPTO, provides trademark examining attorneys at the USPTO, trademark applicants, trademark attorneys, and representatives for trademark applicants with a reference guide on the practices and procedures relating to all phases of the USPTO trademark registration process.
16. At all times relevant to this Complaint, the TMEP, which was electronically accessible over the Internet without cost at <https://tmep.uspto.gov>, was readily available to Respondent.
17. TMEP § 611.01(b) sets forth the general requirements for signatures of trademark documents filed with the Office. TMEP § 611.01(b) specifically states that "[a]nother person (e.g., paralegal, legal assistant, secretary) may not sign the name of an attorney or other authorized signatory. *See In re Dermahose Inc.*, 82 USPQ2d 1793 (TTAB 2007); and *In re Cowan*, 18 USPQ2d 1407 (Comm'r Pats. 1990)."
18. TMEP § 611.01(c) sets forth the USPTO's specific rules for signatures of documents electronically filed with the Office. TMEP § 611.01(c) states, *inter alia*:

All documents **must** be personally signed. 37 C.F.R. §§ 2.193(a)(1), (c)(1), 11.18(a).

The person(s) identified as the signatory **must** manually enter the elements of the electronic signature.

Another person (e.g., paralegal, legal assistant, or secretary) **may not** sign the name of a qualified practitioner or other authorized signatory. *See In re Dermahose Inc.*, 82 USPQ2d 1793 (TTAB 2007); *In re Cowan*, 18 USPQ2d 1407 (Comm'r Pats. 1990).

Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person **is not a valid signature** by that person.

(paragraph spacing and emphasis added).

19. The USPTO's signature requirements are critical to the integrity of the United States trademark registration process because each application includes a declaration required to be signed by the person whose name appears on the application as the signatory and no other person. The declaration contains certifications that are signed under criminal penalty of fine or imprisonment pursuant to the provisions of 18 U.S.C. § 1001.
20. The Trademark Image Capture & Retrieval System ("TICRS") is a USPTO database that, among other things, captures and records (i) the date and time when a document is created on TEAS, (ii) when a document is submitted via TEAS, and (iii) the signature method used when a signed document is filed with the USPTO via TEAS.
21. Likewise, TICRS records the Internet Protocol ("IP") address of the computer used by the document preparer to access the TEAS System. An "IP address" is a unique string of numbers separated by periods that identifies a computer using the Internet Protocol to communicate over a network.
22. When the "DIRECT" sign method is used, the IP address captured by TICRS routinely specifies the geographic location (*e.g.*, city, state/province/country) of the computer from where the application is prepared, signed and filed.

*Respondent Impermissibly Signed USPTO Filings
on behalf of Charles Caldwell, Esq.*

23. Charles Caldwell is an attorney licensed to practice law in the State of Florida. Mr. Caldwell resides in Pensacola, Florida. In or about 2015, Mr. Caldwell entered into an independent contractor agreement with Trademark Factory.
24. Prior to his association with Trademark Factory, Mr. Caldwell had not practiced trademark law before the USPTO.
25. As part of his agreement with Trademark Factory, Mr. Caldwell reviewed trademark forms and materials that were filed with the USPTO on behalf of Trademark Factory clients.
26. Mr. Caldwell did not enter his signature on many of the trademark applications or statements of use filed with the USPTO on which he was the named signatory.
27. From about September 2017, through about June 2019, while associated with Trademark Factory, Respondent impermissibly entered the keystrokes purportedly constituting the electronic signature of Mr. Caldwell on at least one filing in 98 trademark applications in which Mr. Caldwell was the attorney of record.

28. Mr. Caldwell did not apply his signature to any of the following trademark filings on which he is the named signatory:

Table One

	Filing Date	Application Number	Document Type	IP Address Geographic Data
1.	9/21/17	87/616,907	Application	Saint-Therese, Québec, Canada
2.	3/22/18	87/845,778	Application	Les Cedres, Québec, Canada
3.	4/12/18	87/616,907	Statement of Use	Les Cedres, Québec, Canada
4.	5/17/18	87/926,542	Application	Vaudreuil-Dorion, Québec, Canada
5.	5/29/18	87/940,127	Application	Vaudreuil-Dorion, Québec, Canada
6.	8/6/18	88/067,313	Application	Vaudreuil-Dorion, Québec, Canada
7.	8/6/18	88/067,292	Application	Vaudreuil-Dorion, Québec, Canada
8.	8/15/18	88/078,925	Application	Vaudreuil-Dorion, Québec, Canada
9.	9/11/18	88/111,674	Application	Vaudreuil-Dorion, Québec, Canada
10.	9/14/18	88/117,572	Application	Vaudreuil-Dorion, Québec, Canada
11.	10/12/18	88/153,645	Application	Les Cedres, Québec, Canada
12.	10/16/18	88/157,708	Application	Les Cedres, Québec, Canada
13.	10/16/18	88/157,726	Application	Les Cedres, Québec, Canada
14.	10/17/18	88/159,342	Application	Vaudreuil-Dorion, Québec, Canada
15.	10/22/18	88/164,746	Application	Vaudreuil-Dorion, Québec, Canada
16.	10/24/18	88/167,319	Application	Vaudreuil-Dorion, Québec, Canada
17.	10/26/18	88/170,680	Application	Vaudreuil-Dorion, Québec, Canada
18.	11/5/18	88/181,684	Application	Vaudreuil-Dorion, Québec, Canada
19.	11/13/18	88/191,478	Application	Vaudreuil-Dorion, Québec, Canada
20.	11/16/18	88/196,579	Application	Vaudreuil-Dorion, Québec, Canada
21.	12/7/18	88/067,292	Response to Office Action	Vaudreuil-Dorion, Québec, Canada

	Filing Date	Application Number	Document Type	IP Address Geographic Data
22.	12/11/18	88/225,629	Application	Vaudreuil-Dorion, Québec, Canada
23.	12/11/18	88/225,625	Application	Vaudreuil-Dorion, Québec, Canada
24.	12/18/18	88/234,330	Application	Les Cedres, Québec, Canada
25.	12/28/18	88/234,330	Response to Office Action	Vaudreuil-Dorion, Québec, Canada
26.	12/31/18	88/246,078	Application	Vaudreuil-Dorion, Québec, Canada
27.	1/3/19	88/249,149	Application	Les Cedres, Québec, Canada
28.	1/21/19	88/269,640	Application	Vaudreuil-Dorion, Québec, Canada
29.	1/21/19	88/269,570	Application	Vaudreuil-Dorion, Québec, Canada
30.	1/21/19	88/269,540	Application	Vaudreuil-Dorion, Québec, Canada
31.	1/21/19	88/269,512	Application	Vaudreuil-Dorion, Québec, Canada
32.	1/22/19	88/111,674	Response to Office Action	Vaudreuil-Dorion, Québec, Canada
33.	1/28/19	87/940,127	Response to Office Action	Vaudreuil-Dorion, Québec, Canada
34.	2/4/19	88/288,851	Application	Les Cedres, Québec, Canada
35.	2/5/19	88/164,746	Response to Office Action	Les Cedres, Québec, Canada
36.	3/1/19	88/164,746	Response to Office Action	Vaudreuil-Dorion, Québec, Canada
37.	3/11/19	88/225,629	Response to Office Action	Les Cedres, Québec, Canada
38.	3/11/19	88/225,625	Response to Office Action	Les Cedres, Québec, Canada
39.	3/19/19	88/067,313	Response to Office Action	Les Cedres, Québec, Canada
40.	3/20/19	88/234,330	Response to Office Action	Les Cedres, Québec, Canada
41.	4/1/19	88/157,726	Response to Office Action	Les Cedres, Québec, Canada
42.	4/2/19	87/845,778	Statement of Use	Hudson, Québec, Canada
43.	4/23/19	88/288,851	Response to Office Action	Les Cedres, Québec, Canada
44.	4/29/19	88/249,149	Response to Office Action	Vaudreuil-Dorion, Québec, Canada

	Filing Date	Application Number	Document Type	IP Address Geographic Data
45.	5/2/19	88/117,572	Statement of Use	Vaudreuil-Dorion, Québec, Canada
46.	5/23/19	88/246,078	Response to Office Action	Vaudreuil-Dorion, Québec, Canada
47.	5/29/19	87/926,542	Statement of Use	Vaudreuil-Dorion, Québec, Canada
48.	6/11/19	88/078,925	Statement of Use	Vaudreuil-Dorion, Québec, Canada
49.	6/12/19	88/170,680	Response to Office Action	Saint Jerome, Québec, Canada
50.	6/13/19	88/269,640	Response to Office Action	Vaudreuil-Dorion, Québec, Canada

29. Respondent signed Mr. Caldwell's name to trademark filings in violation of 37 C.F.R. § 2.193(a) and (c).

Count II

Failure to Cooperate with a Disciplinary Investigation

30. During the course of an investigation, the OED Director may request from a practitioner information and evidence (a "Request for Information" or "RFI") regarding possible grounds for discipline of the practitioner. *See* 37 C.F.R. § 11.22(f)(1)(ii).
31. A practitioner has an ethical obligation to respond to any lawfully issued RFI. *See* 37 C.F.R. § 11.801(b).
32. On June 5, 2019, the Office of Enrollment and Discipline ("OED") mailed to Respondent an RFI seeking information about, *inter alia*, electronic signatures that were entered on trademark filings associated with Respondent.
33. The June 5, 2019 RFI contained, *inter alia*, questions requiring a response from the Respondent about her personal knowledge of, and practice, policy and procedure for, filing trademark materials before the Office.
34. OED mailed the June 5, 2019 RFI to the street address Respondent provided to OED in her Application for Reciprocal Recognition pursuant to 37 C.F.R. § 11.14(c). The address is located in Saint-Lazere, Québec, Canada.
35. OED lawfully issued the June 5, 2019 RFI pursuant to 37 C.F.R. § 11.22(f)(1)(ii).
36. The RFI requested that Respondent respond within twenty-one days or on or before June 26, 2019.

37. The June 5, 2019 RFI stated: "Also, please note that the USPTO Rules of Professional Conduct impose an obligation to cooperate with OED in an investigation of any matter before it and proscribe knowingly failing to respond to a request from OED. 37 C.F.R. § 11.801(b)."
38. On June 17, 2019, Respondent telephoned an OED staff attorney. During the conversation, Respondent told the OED staff attorney, among other things, that she had received the June 5, 2019 RFI and was taking the RFI very seriously.
39. Respondent did not respond to the June 5, 2019 RFI on or before June 26, 2019, nor did she request an extension of time to do so.
40. On July 1, 2019, an OED staff attorney sent an email to Respondent inquiring, *inter alia*, about the status of her response to the June 5, 2019 RFI, which was due on or before June 26, 2019.
41. The OED staff attorney sent the July 1, 2019 email to [REDACTED], which is the primary email address that Respondent provided to OED in her Application for Reciprocal Recognition pursuant to 37 C.F.R. § 11.14(c).
42. Respondent did not respond to the OED staff attorney's July 1, 2019 email.
43. On July 19, 2019, an OED staff attorney sent a Lack of Response Letter to Respondent and enclosed a copy of the June 5, 2019 RFI. The Lack of Response Letter stated, among other things, that the USPTO Rules of Professional Conduct "proscribe knowingly failing to respond to a request from OED" and that an adverse inference could be drawn from Respondent's failure to respond to the June 5, 2019 RFI.
44. As of the date of the Complaint, Respondent had not answered any of the questions set forth in the June 5, 2019 RFI.

C. Respondent is aware that based on the allegations set out in the Complaint, that the OED Director is of the opinion that she violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.101 (It is professional misconduct to fail to provide competent representation to a client); 11.801(b) (It is professional misconduct to fail to cooperate with OED in an investigation or knowingly fail to respond to a lawful demand for information from a disciplinary authority); 11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 11.804(d) (It is professional misconduct

to engage in conduct prejudicial to the administration of justice); and 11.804(i) (It is professional misconduct to engage in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

D. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct outlined in the disciplinary Complaint *In re Bashtanyk*, Proceeding No. D2020-09, she acknowledges that, if and when she applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in trademark and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that (a) the allegations regarding her in the disciplinary Complaint are true, and (b) she could not have successfully defended herself against such allegations.

D. She has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

E. She consents to being excluded from practice before the USPTO in trademark and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

- A. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
- B. Respondent shall be, and hereby is, excluded on consent from practice before the Office in trademark and other non-patent matters commencing on the date of this Final Order;

C. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;

D. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Jamie Bashtanyk of Saint-Lazare, Québec, Canada. Ms. Bashtanyk is a trademark agent registered to practice before the Canadian Intellectual Property Office ("CIPO"), and Ms. Bashtanyk was granted reciprocal recognition pursuant to 37 C.F.R. § 11.14(c) for the limited purpose of representing parties located in Canada before the USPTO in the presentation and prosecution of trademark matters only. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Ms. Bashtanyk's Affidavit of Resignation and ordered her exclusion on consent from practice before the Office.

Ms. Bashtanyk voluntarily submitted her Affidavit at a time when a formal disciplinary Complaint was pending against her. The Complaint alleged that she failed to provide competent representation to her clients; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct prejudicial to the administration of justice; and engaged in conduct that adversely reflects on a practitioner's fitness to practice before the Office; when she submitted applications, responses to Office actions, and statements of use in violation of the USPTO signature rules and regulations. USPTO regulations require that the person named as the signatory on an electronic trademark document to be filed with the Office must personally enter his or her electronic signature on the document (*i.e.*, personally enter the combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash ("/") symbols in the signature block on the electronic submission). *See* 37 C.F.R. § 2.193(a)(2), (c), and (e); TMEP § 611.01(c). The Complaint also alleged that Ms. Bashtanyk failed to cooperate with OED in an investigation or knowingly failed to respond to a lawful demand for information from a disciplinary authority and by doing so, Ms. Bashtanyk also engaged in conduct prejudicial to the administration of justice and engaged in conduct that adversely reflects on a practitioner's fitness to practice before the Office.

Ms. Bashtanyk acknowledged that the OED Director was of the opinion that her conduct violated 37 C.F.R. §§ 11.101 (It is professional misconduct to fail to provide competent representation to a client); 11.801(b) (It is professional misconduct to fail to cooperate with OED in an investigation or knowingly fail to respond to a lawful demand for information from a disciplinary authority);

11.804(c) (It is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 11.804(d) (It is professional misconduct to engage in conduct prejudicial to the administration of justice); and 11.804(i) (It is professional misconduct to engage in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

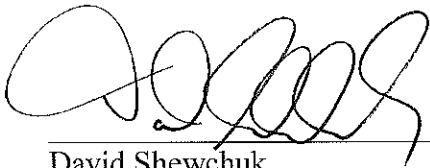
While Ms. Bashtanyk did not admit to violating any provisions of USPTO Rules of Professional Conduct as alleged in the Complaint, she acknowledged that, if and when she applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the Complaint against her are true, and (ii) she could not have successfully defended herself against those allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>;

E. Respondent shall comply fully with 37 C.F.R. § 11.58; and

F. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for

reinstatement.



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

17 April 2020
Date

on delegated authority by

Andrei Iancu
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

cc:
William R. Covey
Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Ms. Jamie Bashtanyk
c/o Emil J. Ali

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